



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/172767

PRELIMINARY RECITALS

Pursuant to a petition filed March 10, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by Care Wisconsin First, Inc. to deny a request for personal hygiene wipes under the Family Care Program (FCP), a hearing was held on April 21, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether wipes can be a covered supply under the FSP.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Care Wisconsin First, Inc.
2802 International Lane
Madison, WI 53704-3124

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 27-year-old resident of Oconto County. He was found eligible for the FCP in 2015. His managed care organization (MCO) is Care Wisconsin.
2. Petitioner has cerebral palsy and intellectual disability. He requires assistance with all activities of daily living. He is incontinent on a daily basis.

3. In January, 2016 petitioner's mother, who also is his guardian, requested that the MCO cover personal hygiene wipes to help clean petitioner after bouts of incontinence. Wipes are listed specifically as non-covered on Care Wisconsin's benefit package, and as a result the request was denied. A notice of denial was sent on January 25, 2016. The notice told petitioner that the denial could be appealed directly to the Division of Hearings and Appeals in a fair hearing.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The MCO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the denial of eligibility for the program and the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, he may then request a hearing with the Division of Hearings and Appeals. Wis. Admin. Code, §DHS 10.55(2).

Although the Care Wisconsin notice told petitioner that the decision to deny wipes was appealable directly to the Division of Hearings and Appeals, I question whether there is jurisdiction because the issue did not first go before a grievance committee. This denial is not one of the clearly stated bases for direct appeal. One of the avenues of direct appeal is that the care plan is unacceptable because the support items are insufficient to meet the enrollee's needs. Wis. Admin. Code, §DHS 10.55(1)(f)2. Although I believe that provision refers to the development of the care plan and not a request to change the care plan, essentially petitioner is arguing that the care plan as it stands fails to provide sufficient support to meet his needs. I thus will review the merits of the appeal, but I urge Care Wisconsin to review its notices to address the need to have grievance hearings prior to fair hearings in appropriate circumstances.

Care Wisconsin specifically denies coverage of wipes in its benefit package except in special situations such as skin breakdown. Otherwise the agency considers wipes to be items of convenience and not medical in nature. Petitioner does not meet the special situation exception.

I note first that the MA program covers wipes. I reviewed the Department's MA Provider's Handbook, found on-line at <https://www.forwardhealth.wi.gov/WIPortal/default.aspx> (click on "Online Handbooks"). Wipes are covered under "Incontinence and Urological Supplies" as part of a contract with a medical supply company. See Topic #7957 of the Handbook. It thus would be odd that the MA program, which can cover only medically necessary medical items, considers wipes to be necessary incontinence supplies, while an FCP MCO, which should have broader coverage, considers the items to be for convenience.

Petitioner's mother notes that the Oconto County Dept. of Social Services paid for wipes for petitioner prior to his FCP eligibility. In addition, petitioner's doctor considers the wipes to be necessary. See 2/26/16 letter from Dr. [REDACTED].

I conclude that the MCO should cover the requested wipes in this specific instance. Petitioner has regular incontinence, and not only are the wipes more convenient, but they are more sanitary. Their use also enhances petitioner's quality of life, which is one of the goals of the FCP. I question whether the alternative suggested by the MCO is a reasonable less expensive alternative. Cleaning petitioner with soap, water, and cloth strikes me as being messy and potentially unsanitary; wipes are used by parents of children not only because they are convenient but because they are much cleaner than using other methods. I acknowledge that cost was not discussed at the hearing, but I suspect that cost will not be unduly burdensome. If cost is a problem the MCO can move to limit the quantity.

CONCLUSIONS OF LAW

In this instance, where the FCP enrollee is regularly incontinent, the purchase of wipes for cleaning is not a mere convenience but necessary to maximize cleanliness and to enhance his quality of life.

THEREFORE, it is

ORDERED

That the matter be remanded to the MCO with instructions to instructions to cover petitioner's requested personal hygiene wipes, within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of April, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 27, 2016.

Care Wisconsin First, Inc
Office of Family Care Expansion
Health Care Access and Accountability